THE
MADRAS LAW JOURNAL.

VOL.] MAY, 1929. [LVI.

THE RECORDING AND THE DECREEING OF COMPROMISE PETITIONS.

Where a suit has been adjusted by any lawful compromise, O. 23, R. 3, C. P. Code, enacts that "the Court shall order such compromise to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit"; that is, the entire compromise has to be recorded, but only so much of it as relates to the suit is to be decreed. Only the decreed portion, as distinguished from the recorded portion, will be executable in the suit. According to the Privy Council in *Hemanta Kumari Debi* v. *Midnapur Zemindari Company,*[1] "A perfectly proper and effectual method of carrying out the terms of O. 23, R. 3, C. P. Code, would be for the decree to recite the whole of the agreement, and then to conclude with an order relative to that part which was the subject of the suit, or it could introduce the agreement in a schedule to the decree; but in either case, although the operative part of the decree would be properly confined to the actual subject-matter of the then existing litigation, the decree taken as a whole would include the agreement." In passing, it may be observed that, for convenience sake, the entire compromise is usually appended as a schedule to the decree, instead of being recited in the body of the decree.

The expression "relates to the suit" means "relates to the matters in question in the suit" as contrasted from those not so in question. But in settling the suit-claim, the parties are at liberty to agree upon any relief, though the relief may be different in kind from that claimed in the plaint; and the agreed relief may be decreed by the Court. For instance, a compromise decree in a suit on a promissory note by which the agreed

1 (1919) I.L.R. 47 C. 485: 37 M.L.J. 525 (P.C.).

amount is *charged* upon property, is quite valid; that is because the relief by way of charge relates to the suit or "the matter of the claim in the case". The decision in *Joti Kuruvetappa* v. *Isari Sirusappa*[1] is only that, and nothing more. The case in *Sabapathi* v. *Vannmahalingam*[2] marks a further step. It lays down that where a compromise goes beyond the subject-matter of the suit and contains other conditions relating to extraneous matters of dispute, if those conditions are to any extent the consideration or the moving force for the compromise of the subject-matter of the suit, they must all be *decreed* as relating to the suit. The fact that the extraneous conditions admit of easy segregation is no bar to their being decreed in the suit. Presumably, all the terms of a compromise are inter-dependent, and agreed upon as a whole and on the whole. The case in *Ramaswami Naidu* v. *Subbaraya Tevar*[4] goes still further; it explains away the cautious obiter expressed by the Privy Council in *Hemanta Kumari Debi* v. *Midnapur Zemindari Company*[1] cited above. The broad theory that it sanctions is this: Where it would not be easy to segregate the terms of a compromise relating to the matters in question in the suit, from those not so in question, *i.e.*, where they are blended in one indiscriminate and indivisible whole, the entire provisions of the compromise are to be decreed as relating to the suit. In that case, a suit *X* was compromised on terms affecting two other suits *Y* and *Z*, and involving their dismissal. In quit of all claims in the three suits, there was a compromise decree in suit *X*, by which the plaintiff was granted twice the amount claimed by his plaint in that suit. Of course, it could not be guessed how much of the agreed amount was properly referable to the claim in suit *X*, and how much of it was properly referable to the claims in the two other suits; but despite that uncertainty, the entire amount agreed upon by the parties was decreed and allowed to be executed in suit *X*. In *Dooly Chand Srimali* v. *Mohan Lal Srimali*[5] the Court refused to record the compromise of a suit on the ground that the compromise included provisions affecting the rights and liabilities of two persons (one of them a minor) who were not parties to the suit. (See also *Ram Protap Chamria* v. *Durga Prasad Chamria*[6]).

1. (1919) I.L.R. 47 C. 485: 37 M.L.J. 525 (P.C.).
2. (1907) I L.R. 30 M. 478: 16 M.L.J. 354.
3. (1914) I.L.R. 38 M 959: 26 M.L.J. 331.
4. (1925) 49 M.L.J. 490.
5. (1923) I.L.R. 51 C. 432.
6. (1925) L.R. 53 I.A. 1: I.L.R. 53 C. 258: 49 M.L.J. 812 (P.C.).

As the law stands in Madras, it would be a permissible device of draftsmanship for the parties to a compromise petition to state therein that all the terms of the compromise, however extraneous to the suit, are to be decreed in the suit, so as to be executable in the suit. And in execution at all events, a compromise decree cannot be impeached on the ground that it is in excess of the suit. (*The Manager of Sri Meenakshi Devastanam, Madura* v. *Abdul Kasim Sahib*[7] followed in *Sarvarayudu* v. *Venkatarajn*[8] and *Ramaswami Naidu* v. *Subbaraya Tevar*[4]). Where during the pendency of a suit, the parties compromise the subject-matter of the suit along with other points of dispute, it is not unreasonable to assume that every other term of the compromise is a consideration for every other term, that the parties agree to it only on the whole and as a whole, and that they intend that all the terms of the compromise should be decreed in the suit so as to be executable in the suit without further ado. As per the view current in Madras, there is no obstacle to the fulfilment of that intention of the parties; for, the words "so far as it relates to the suit" in O. 23, R. 3 have received the most benignant interpretation.

Even on the most benignant view, one instance may be given where the Court would give strict literal effect to the above statutory words. Where a term of the compromise petition filed in suit *A* relates to another pending suit *X*, the term need only be recorded but not decreed in suit *A*, when it can be more properly decreed and ordered in suit *X*. Lastly, if the compromise of a suit be a mere device to secure an extraneous advantage to the parties by defeating the stamp law or the registration law, the Court would hold the compromise to be unlawful as per section 23 of the Contract Act. No doubt the Privy Council have decided in *Hemanta Kumari Debi* v. *Midnapur Zemindari Company*[1] that section 17, sub-section (2) (*vi*) of the Registration Act, which provides that sub-section (1) (*b*) and (*c*) are not to apply to a decree of Court, extends to the whole of a compromise decree, and not merely to that part which is operative as a decree. Notwithstanding that decision, if under the cloak of settling a promissory note suit for Rs. 4,000, the parties file a compromise petition effecting a

---

1. (1919) I.L.R. 47 C. 485 · 37 M.L.J. 525 (P.C).
4 (1925) 49 M.L.J. 490.
7. (1907) I.L R. 30 M. 421: 17 M.L.J. 255.
8. (1913) I.L.R. 38 M 459 · 25 M.L.J. 617.

sale or a mortgage for Rs. 4 lacs, the Court would properly decline to record or decree the compromise.

K. C. GOPALA DESIKAN.

CRITICAL NOTE.

MABEL FERRIS *v.* EMPEROR, I.L.R. 53 Bom. 149.

This case raises an interesting point as to the nationality of a lady born in South Africa of European parents, but married before a Registrar at Johannesburg to a Muhammadan who was a native of Baroda State. After the marriage the lady lived with her husband in Baroda, but when she found that he had another wife already married, differences between them arose and she went away and lived in British Territory (in Bombay). The husband brought a charge of theft against her and a warrant under section 7 of the Indian Extradition Act was issued by the Resident of Baroda for her arrest and extradition and directed to the Chief Presidency Magistrate of Bombay. Accordingly the petitioner was arrested by the Bombay Police but she claiming herself to be a European British subject applied to the Chief Presidency Magistrate for exemption under S. 7 of the Extradition Act. The Presidency Magistrate, following the opinion of the Legal Remembrancer, held that she ceased to be a European British subject by her marriage with a native subject of Baroda and had become a subject of the Baroda State and ordered to furnish bail or surrender herself. She preferred a revision petition against this order to the High Court of Bombay. The learned Judges expressing the view that in this matter, it is the common law of England that is followed in India, held that the marriage did not change the nationality of the wife and that she retained her nationality as a European British subject and was not liable to be extradited.

It is submitted that this view of the law requires re-consideration. Assuming the common law view is that the wife does not follow the nationality of the husband, by divesting her own merely by virtue of marriage, that does not affect the present question. The decision that, in the case under review, the wife retains her nationality and does not follow that of her husband is open to two serious objections. The wife in this particular case not being born in Great Britain but being born in Johannesburg—though of European parents—cannot claim to be a European British subject under the common law, for "according to English common law, nationality depends not on descent

from English ancestors (*jus sanguinis*) but upon the place of a man's birth (*jus solii*), following the feudal principle which to a certain extent regarded all inhabitants of the soil as appendages to it" (Foote's Private International Law, 5th Ed., p. 1). Thus, under the Common Law, the European British nationality could be claimed only by being born in the soil of Great Britain. This was first modified by Statute 25 Edw. 3, c. 2 which enacted that those born of British subjects "without the legiance of the King of England" shall enjoy the benefits of British subjects so far as their inheritance is concerned. It may be noted that this related only to inheritance. It was only by 7 Anne c. 5, s. 3 that "to all intents, constructions and purposes whatsoever the privileges of a British subject were conferred on children of natural born British subjects born out of wedlock." So the petitioner being born in Johannesburg, of British parents, could claim to be a European British subject only by virtue of Statute 7 Anne c. 5, s. 3 and not under the Common Law. Therefore her nationality after marrying a person not a European British subject, but a subject of Baroda State, is governed by section 10 (1) of the Act, 1870 (33 Vic. c. 14) which says that "a married woman shall be deemed to be a subject of the State of which her husband is for the time being a subject." It may be remarked that 33 Vic. c. 14, s. 10 was only a re-enactment of a similar Act of 1844. This law was re-enacted in 1914—4 and 5 Geo. 5, c. 17, s. 10 which says that "the wife of a British subject shall be deemed to be a British subject and the wife of an alien shall be deemed to be an alien: Provided that when a man ceases during the continuance of his marriage to be a British subject it shall be lawful for his wife to make a declaration that she desires to retain British nationality and thereupon she shall be deemed to be a British subject." This was repeated in the Amending Acts of 1918 [8 and 9 Geo. 5, c. 38, s. 2 (5)] and of 1922 (12 and 13 Geo. 5, c. 44) cited as the British Nationality and Status of Aliens Acts—1914 to 1922. *Vide* Foote's International Law, 5th Ed. of 1925, p. 6.

Secondly, as the marriage is with a lady who is a European British subject it must be deemed to have been celebrated under section 1 of the Foreign Marriages Act of 1892 (55 and 56 Vic. c. 23) which says that "All marriages between parties of whom one at least is a British subject solemnised in the manner in this Act provided in any foreign country or place by or before a marriage officer within the meaning of this Act shall be as valid in law as if the same had been solemnised in the United Kingdom with a due observance of all forms required

by law". The marriage in question was celebrated after the Parliamentary Acts of 1884, 1870, and 1914 referred to above and as there is no suggestion in the judgment under review of the wife having made a declaration of her desire to retain her British nationality at the time of her marriage, she must be deemed to have ceased to be a European British subject and to have adopted the nationality of her husband who is a subject of the Native State of Baroda.

From the above two observations it becomes evident that the rule of common law held as applicable to the facts in the judgment under review—namely, that the wife does not follow the nationality of her husband but retains her own—does not seem sound.

Another argument that was adopted in the judgment to uphold the conclusion arrived at—namely that the petitioner is a European British subject under section 4 (*i*) of the Criminal Procedure Code as amended uptodate—which says that a European British subject means "any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Islands or any colony" and "any subject of His Majesty who is the child or grandchild of any such person by legitimate descent," and that therefore in spite of the wife's marriage with a subject of the Native State of Baroda, she retains her nationality as a European British subject and that if the legislature wanted that the marriage of a European British subject with a non-British subject should divest her of her previous nationality, specific provision would have been made in the definition of the term "European British Subject". This argument ignores two considerations. Firstly, S. 4 (*i*) of the Criminal Procedure Code applies only to persons who retain the nationality of European British subject at the time of the offence. Secondly, the argument ignores the fact that the law, of the wife following husband's nationality laid down by Acts of Parliament in 1870, 1914, 1918 and 1922 referred to above, cannot be affected by the enactments of the Governor-General in Council. *Vide* S. 65 (2) of the Government of India Act.

It is possible to decide the case on a different ground and arrive at the same conclusion at which the learned Judges have arrived, with less room for comment. The fact is raised and admitted that the husband is already married and has a wife living in the Native State of Baroda. The marriage having been celebrated under the Foreign Marriages Act of 1892, with the

lady at Johannesburg by the husband during the lifetime of a lawfully wedded wife, his second marriage is invalid. By such invalid marriage the nationality of the lady remains unaffected and she continues to be still a European British subject, not liable to be extradited under section 7 of the Extradition Act.

C. UNIKANDA MENON,
Advocate.

CORRESPONDENCE.

To
THE EDITOR.
SIR,

Is allowing more than two persons (besides the driver) to sit by the side of a driver in a bus, an offence at all and is it punishable under the Motor Vehicles Act?

We have very often come across convictions for the said act and we never cared to question whether the procedure adopted was correct. A close scrutiny of the provisions of the Act and the rules leaves the matter in doubt, rather makes one incline to the view that the procedure adopted hitherto is wrong. I shall be glad to state my analysis so that the other side may be canvassed and let known for all concerned.

To preface, Section 16 is the provision that is quoted in all summonses to the accused in motor prosecutions as though it is an offence-defining section. The procedure is entirely wrong and in very strong terms, that method of action has been condemned by Justice Walsh of the Allahabad High Court.

Section 16 states the penalty for "*contraventions* of the provisions of this Act or of any rule made thereunder *if no other penalty is elsewhere provided in this Act for such contravention.*" The proviso beginning from "if no other penalty" is very important. If such a provision is made, S. 16 loses its jurisdiction over such acts and the Magistrate Court cannot take action. S. 17 relates to cognizance of *offences* by Magistrates.

The relation between the wording of Ss. 16 and 17 and the distinction they make between *a contravention of a provision* (in S. 16) and *an offence* (S. 17) deserve careful attention. Probably an offence under S. 17 may be a contravention of a provision for which no penalty is elsewhere provided in the Act.

Has the Act made any provision for penalties at all when other contraventions intervene? S. 18 gives the power to the Local Government for cancellation or suspension of licences.

It has got the power to disqualify a person from holding a licence. S. 18 (I-A) to the 'Prescribed authority' gives power to cancel or suspend any licence granted under the Act subject to conditions and limitations: so there are penalties provided in the Act. Rules will take us into details.

The "Prescribed authority" are given in Rule 1 (*d*). They are the "Registering authority" and "Licensing authority". They register, grant and cancel licences *subject to certain conditions*. What are they? Rule 30 prescribes that motor vehicles intended for hire should possess a 'G' permit. The *conditions* are given in Form G attached to the Rules. There are also *penalties* provided *for the breach of the conditions.*

The act of allowing more than two persons beside the driver goes against *Condition No.* 2 in 'G' permit—"Not more than two persons shall be allowed to sit by the side of the driver".

If broken is there any penalty? The old Condition 6 and the recent condition (amended Notification No. 546, 18th July 1928) states: "This permit may be cancelled or suspended by the District Magistrate or the Commissioner of Police for any breach of *its conditions.*" So when the Condition 2 is violated, Condition 6 gives the power to the 'Prescribed authority' to cancel the licence.

So under S. 16, when the Condition No. 6 in G. permit is a sufficient penalty to the contravention of Condition 2, how can the Magistrate take cognizance of a case under S. 16? S. 16 is restricted and limited in its scope as observed before. So "the act of carrying more than two by the side of a driver" is not an offence—it is at best a breach of a condition in G. permit which regulates the internal affairs of a bus.

Besides, G. permit represents the terms and conditions of a contract between the Licensor and the Licensee. A breach of a condition in a contract by any stretch of imagination can never be put down as an offence triable by a criminal court. If there is a breach of a condition, civil law will provide damages or a forfeiture if one or a penalty if provided in the contract itself will operate. That is Condition No. 6 in the G. permit. So in no case it is a criminal offence.

I shall be happy if this view is found acceptable to all; if not, I shall be glad to know how it is assailable.

E. S. SUNDA, B.A., B.L.,
Pleader, Madura.

SUMMARY OF ENGLISH CASES.

MESSAGER *v.* BRITISH BROADCASTING CO., (1929) A.C. 151: 98 L.J.K.B. 189.

Copyright—Infringement of—Opera—Agreement containing rights of parties—Construction of—Whether assignable.

By virtue of an agreement between the composer and the authors of an opera on one side with the proprietor of a theatre on the other, a play was delivered to the proprietor who was also granted the sole and exclusive right of representing or performing the play in the United Kingdom, America, etc. The copyright was under the agreement to remain the property of the composer. But if the proprietor should fail to produce the play within a certain time in London all the rights conferred under the agreement were to revert back to the composer and authors. Proper accounts of the receipts at the theatres in which the play was to be represented had to be maintained by the proprietor and the other party to the agreement had the right to inspect them.

On the death of the proprietor, the executors of the proprietor assigned the benefit of the agreement to the respondent company without the consent of the appellants.

Held, affirming the judgment of the Court of Appeal, that on the construction of the agreement it operated as an assignment of the sole and exclusive right of representation within the area mentioned in the clause, that the other clauses also supported that interpretation. The agreement was not a bare licence or personal to the grantee, but it is one the benefit of which the proprietor or his executors could validly assign.

NASH *v.* LYNDE, (1929) A.C. 158: 98 L.J.K.B. 127.

Company—"Issue" of prospectus—Meaning of—Shares subscribed for on the faith of the prospectus—Failure to comply with S. 81, *Companies (Consolidation) Act,* 1908*—Claim for damages.*

With a view to increase the capital of the company, the managing director of the company prepared two documents, one describing the position of the company and the other stating the purpose for the increase of the capital. The two documents were signed by the other directors as well. Application forms for shares were also attached to them. One of the directors sent a copy of the documents to a solicitor to find out some among his clients who will be ready and willing to provide the capital required. The documents reached the respondent's

hands and the respondent misled by the statements contained in them subscribed for 3,000 ordinary shares in the company. No information was given to him about the capital that had already been issued otherwise than for cash and this action was brought by the respondent for damages on the ground that the two documents constituted a prospectus issued by the company and that it omitted to mention the shares which were issued otherwise than in cash.

Held, the documents were never issued to the respondent as a "prospectus" inviting him to subscribe to the shares.

Per Lord Hailsham, L.C.—It is sufficient to bring section 81 into operation to prove that the prospectus in question was shown to any person as member of the public as an invitation to that person to take some of the shares referred to therein on the terms therein set out.

RECKITT *v.* BARNETT, PEMBROKE AND SLATER, LTD., (1929) A.C. 176: 98 L.J.K.B. 136.

Principal and Agent—Power-of-attorney—Management of principal's affairs—Power to draw cheques 'without restriction'—Cheque drawn in favour of respondent for agent's private debt—Liability of payee to refund.

The appellant while leaving for France on Red Cross work gave a power-of-attorney to one T to enable him to manage the appellant's affairs while he was in France. On the appellant's bank doubting if the power authorised T to draw cheques on appellant's account, the appellant wrote a letter to the Bank stating that he wished the power to cover the drawing of cheques upon them by T 'without restriction'. The agent for his own private debt drew a cheque on the appellant bank in favour of the respondent but signed by him as power-of-attorney agent. The respondents knew that it was drawn for his own private debt. This action was brought by the appellant to recover the amount of the cheque from the respondents (*i*) as damages for conversion, or (*ii*) alternatively for money had and received to the appellant's use.

Held, reversing the Court of Appeal, the authority to draw cheques was limited for the purpose of the power, namely, the management of the appellant's affairs and the letter could not amplify it further. The cheque being drawn in excess of his authority and the respondents being aware of it, were bound to hold the proceeds for the appellant and refund them when demanded.

John v. *Dodwell & Co.,* (1918) A.C. 563 followed.

INLAND REVENUE COMMISSIONERS *v.* FORTH CONSERVANCY BOARD, (1929) A.C. 213: 98 L.J.P.C. 34.

Income-tax—River Conservancy Board—Shipping dues—If taxable.

The Forth River Conservancy Board was assessed to income-tax on the balances of income derived by the Board by levying rates and dues on ships, etc., entering and using the river. The Board was constituted by statute for the purpose of improving the navigation of the river. The question was if the surplus of the income was not profit from or arising out of any lands, tenements, hereditaments or heritages within the meaning of Schedule A of Income-tax Act, 1918.

Held—Tolls may well arise in connection with such property as is specified in Schedule A but in the present case shipping dues and dues on passengers are not moneys arising from any property as the respondents did not own any heritable subjects apart from a portion of the foreshore purchased for possible future reclamation.

Case-law on the point reviewed.

GOSSE MILLERD, LTD. *v.* CANADIAN GOVERNMENT MERCHANT MARINE, LTD., (1929) A.C. 223: 98 L.J.K.B. 181.

Shipping—Bill of lading—Consignment of tinplates—Damaged by rain by negligent dealing with tarpalins during voyage—"Neglect in the management of the ship"—Meaning of.

The appellants consigned tinplates on board the respondent's steamship under a bill of lading. In the course of the voyage the steamship collided with a pier and damaged her stern which necessitated extensive repairs. On account of carelessness of the servants in moving and replacing the tarpalins when the repairs were being done, the hold containing the tinplates was exposed to rain which consequently damaged the tinplates. In the action for damages for the injury caused to the tinplates, it was contended that it was an act, neglect and default of the servants "in the navigation or in the management of the ship" and as such the shipowners were freed from liability.

Held, that the shipowners as carriers had failed to properly and carefully load, handle, store, carry, keep, care for and discharge the goods carried; and as such it lay on them to prove that they were protected from liability by Art. IV. The negligence in dealing with the tarpalins is not negligence in the management of the ship within the meaning of Art. IV, rule 2 (*a*) of Carriage of Goods by Sea Act, 1924.

TRANSFERRED CIVIL SERVANTS (IRELAND) COMPENSATION, *In re*, (1929) A.C. 242.

Privy Council—Rehearing—Power to overrule its own previous decision in another case—Practice in cases of rehearing the same case.

The identical question in the appeal, namely, the compensation payable to those civil servants in the service of the Crown who were transferred to the Irish Free State in 1922 and were discharged or have retired in consequence of the change of Government effected by the establishment of the Irish Free State Government, was decided on a prior occasion by the Judicial Committee in *Wigg's case* [(1927) A.C. 674]. The question arose if the Board is bound in law, and without examination, to follow that decision whether they considered it to be right or wrong.

Held, the Board would hesitate long before disturbing a decision by a previous Board which raised an identical or even a similar issue for determination; but there is no inflexible rule that the Board is, in all circumstances, bound to follow blindfold a previous decision. Petitions for rehearing of a case already decided stand on a different footing. Though there is no inherent incompetency in ordering a rehearing even, such an indulgence will be granted in very exceptional circumstances only. It is in the nature of an *extraordinarium remedium.*

CURTIS *v.* FRENCH, (1929) 1 Ch. 253: 98 L.J. Ch. 29.

Vendor and purchaser—Sale of property—Deliverable with vacant possession—Tenant in possession—Untrue statement by vendor—Purchaser misled thereby—Condition excluding compensation for misstatements in particulars—If precludes action for damages.

The plaintiff purchased a cottage at an auction sale and one of the particulars of sale stated that the property was let to a tenant who "formally and legally terminated the tenancy, but has not yet handed over vacant possession, the vendor has not pressed for possession, allowing the occupier to remain on sufferance, but the premises will be sold with vacant possession on completion." The statement that the vendor had not pressed for possession was found to be untrue and made with a view to induce intending purchasers. On completion vacant possession was not given to the plaintiff. In an action for damages for breach of the contract, the vendor pleaded in defence a clause

in the particulars that he will not be liable to compensate for errors, misstatements or omissions in the particulars afforded.

Held, the contract itself precluded the purchaser from recovering anything for the loss sustained by the misstatements. In the position which had arisen he would be entitled to rescind the contract and to recover his deposit with interest and the costs of investigating the title but nothing more.

SMITH HOGG & CO. *v.* LOUIS BAMBERGER & SONS, (1929) 1 K.B. 150.

Shipping—Charterparty—Clause to discharge cargo 'alongside' steamer—Meaning of—Custom of the Port of London—Expenses of discharge—Liability of.

By a charterparty, the plaintiffs, the proprietors of the steamship *Fernhill,* agreed to carry and deliver at Surrey Docks certain cargo, the charter providing that the cargo was to be 'brought to and taken from *alongside* the steamer at charterer's risk and expense as customary'. The customary method of discharge at Surrey Docks was as follows:—(1) As regards discharge on to the quay the shipowner was bound to discharge the timber on to the quay and stack it there. (2) As to cargo landed overside into lighters, the shipowners must deliver and stow it in lighters sent *alongside* by its receivers. The plaintiffs discharged part of the goods on to the quay and part into lighters brought to the side of the ship. The question arose as to the meaning of the term 'alongside,' it being contended for the shipowner that in case (1) his obligation ceased the moment the cargo was placed over the side of the ship on the quay, and in case (2) that his duty was merely to pass the cargo over the side of the steamer into the lighter and that any custom to the contrary was inconsistent with the terms of the contract.

Held, by *Wright, J.,* "that the cargo is alongside when it is available for release or is released from the ship's slings if discharged by the ship's tackle; and if discharged by being handed from the vessel, when it is laid with one end on the quay and the other resting against the ship". From this point the obligation of the receiver begins under the contract. As regards delivery into the lighters, the plaintiffs' duty extended till stowing the timber into lighters.

On appeal:—The obligation of the shipowners was not merely to render the cargo available for release from the steamer's tackle on to the quay but to stack the cargo on the

quay according to the custom of the port. *The Twind,* (1922) 1 A.C. 397 and *The Oresund,* 30 Com. Case 69 distinguished. The other portions of Wright, J.'s judgment affirmed.

TICKNER *v.* CLIFTON, (1929) 1 K.B. 207: 98 L.J.K.B. 69.

Landlord and Tenant—Death of tenant without paying rent for six months—New statutory tenant, a member of his family—Liability to pay arrears.

An action was brought against the defendant for recovery of the arrears of rent due by her father as statutory tenant. The defendant was a member of the deceased's family and resided with him at the time of his death.

Held, the defendant was a statutory tenant with all the rights and liabilities of a statutory tenant and on the same terms and conditions as the original agreement of tenancy. But her statutory tenancy began with her and she was not responsible for what went on before she became a statutory tenant. The arrears which the defendant's father owed to the plaintiff is not a debt owing by the defendant herself *qua* statutory tenant.

THE KING *v.* WILLIAM JONES, (1929) 1 K.B. 211: 98 L.J.K.B. 174.

Criminal Law—Felony—Conviction for—Compensation order—Order..........with reference to the person convicted—Jurisdiction of Court of Criminal Appeal—Forfeiture Act, 1870, *S.* 4 *and Criminal Appeal Act,* 1907, *S.* 21 *considered.*

On the conviction of the appellant for uttering a cheque knowing the endorsement to be forged, an order was also passed against him to pay compensation to the prosecutor to the loss sustained by him by the felony. On appeal against the order, the question was raised whether an appeal lay to the court from such order.

Held, that the order was made immediately after the conviction and had reference to the person convicted or his wife or children and was thus within the meaning of S. 4 of the Forfeiture Act, 1870 and S. 21 of the Criminal Appeal Act, 1907 and therefore an appeal lay.

WICKETT *v.* PORT OF LONDON AUTHORITY, (1929) 1 K.B. 216.

Negligence—Barge passing through the entrance lock to the dock—Owners of the Dock supplying rope—Breakage of

—Injury caused to lighterman—Notice by the owners of the Dock exempting themselves from responsibility—Liability of owners for injury.

The Port of London Authority had by notice put on the pierhead exempted itself from liability for any "loss, damage or injury from whatever cause arising to or by the craft or to or by any person or goods on board thereof." A lighterman having knowledge of the notice sustained injuries while navigating a barge from a dock which was owned by the authority because of the breakage of a rope supplied by the authority under whose directions and orders the navigations were to be conducted. The lighterman claimed damages for the injuries sustained by the negligence of the servants of the Port of London Authority on the ground that he, being under the orders and directions of the Authority, had no option to refuse to use the rope which he was directed to take on board.

Held, the fact that the plaintiff was compelled to regulate his vessel according to the directions of the dockmaster is in no way inconsistent with the fact "that he was in circumstances availing himself of the facilities and assistance of the servants of the Authority'' and the plaintiff, having knowledge of the notice given by the defendants, exempting themselves from liability, the defendants cannot be held liable for the injuries sustained by the plaintiff.

THE KING *v.* EDMONTON INCOME-TAX COMMISSIONERS. *Ex parte* THOMPSON, (1929) 1 K.B. 200.

Revenue—Assessment to income-tax—Case stated—Whether notice in writing a condition precedent—Mandamus—Income-tax Act, 1918, *S.* 149*—Interpretation of.*

A limited company was assessed to income-tax and on its appeal to the General Commissioners being dismissed, an oral application was made to the Commissioners to state a case for the opinion of the High Court which it was alleged was agreed to by the Commissioners. No formal written notice was thereafter given to the Clerk of the Commissioners and the Clerk intimated to the solicitors of the company that the requirements of S. 149 of the Income-tax Act, 1918 *re* notice in writing, not having been complied with, the Commissioners had no power to state a case.

On the issue of a rule *nisi* to the Commissioners to show cause why a writ of mandamus should not issue directing them

to state a case, the Commissioners relied on Summary Jurisdiction Act, 1879, S. 33 and Income-tax Act, 1918, S. 149.

Held, upon the true interpretation of the above Acts, the notice in writing is a condition precedent and that not having been complied with, the Commissioners had no jurisdiction to state a case.

The dictum of Jessel, M. R. in *Taylor* v. *Taylor,* (1875) 1 Ch. D. 426 at 431 quoted with approval.

BROTHERTON *v.* J. A. JACKSON, (1929) L.J.K.B. 76.

Workmen's Compensation Act—Accident relating in death—Workman warned not to go by a certain route—Workman disobeying the warning and meeting with the accident thereby—If would disentitle him from claiming compensation—Act done for and in connection with the employer's business.

The deceased workman was employed as a sort of standby man to assist the engine driver around a navy crane (which was excavating land and putting the soil in a bucket and dropping it into trucks). During the recess interval when he had no work, the workman went to a neighbouring kiln to wash his hands. He returned to his place of business by a short cut which took him directly under the navy bucket which fell on him and killed him. The employer had specially warned him against taking that route. The employer contended that by acting against the warning, the workman acted outside the sphere of his employment and as such it was not an accident met with in the course of or arising out of the employment.

Held, the workman was doing it clearly for the purpose of and in connection with the employer's trade or business, though it may be in defiance of the employer's warning. An act may be outside the scope of one's employment if it is in breach of a specific prohibition, but the section clearly covers such cases as well and entitles the workman to compensation.

BARBER, WALKER & CO. *v.* FLINT, (1929) L.J.K.B. 83.

Workman's compensation—Agreement limiting the compensation—Change of circumstances—Allegation of—Whether application for review maintainable.

An employee sustained serious injuries in the thigh due to an accident during the course of his employment. He was paid full compensation for a time and later half the difference of his earnings between what he obtained prior to the accident and

what he received after. Later, an agreement was entered into between the employee and the employers by which it was provided that the employers "should so far as they conveniently could do find and provide at their colliery employment for Joseph Flint and pay him wages which he could earn at such employment by working part time, but not in any case, exceeding one pound". The agreement was made liable to review at the instance of either parties subject to the provisions of Sch. I, para. 16 of the Workmen's Compensation Act.

The employers sought to have a review of the agreement on the ground of fall in wages, which they contended amounted to a change of circumstances within the meaning of the agreement.

Held, confirming the award of the County Court Judge, that the mere fact that there has been a change in the general rate of wages which is a matter contemplated in the agreement itself is not such a change of circumstances as justifies the employers in breaking the agreement and obtaining a fresh award.

Per Lawrence, L.J.—The parties here have chosen by their agreement to use words which cover the fall in the rate of wages and to provide for the weekly payments which were to be made even though there is a fall of wages. Under such an agreement,............it seems to me that there has been no change of circumstances within the meaning of the authorities.

HYMAN *v.* HYMAN. HUGHES *v.* HUGHES, (1929) P. 1.

Divorce—Deed of separation—Covenant by wife not to sue for alimony or maintenance—Wife obtaining decree for dissolution of marriage—Effect on the covenant—Right to maintenance.

By a deed of separation entered into between them, a husband and wife agreed to live separate and on the husband's agreeing to pay the wife a stipulated sum during her life as for alimony and maintenance, the wife covenanted not to take any proceedings against the husband either for cohabitation or for increased alimony. Subsequently the wife obtained a decree for divorce on the ground of the husband's adultery and applied for increased maintenance. The husband pleaded the covenant as a bar and the question arose whether the covenant bound the wife after divorce.

Held by the majority (Lord Hanworth, M. R., Scrutton, Greer and Sankey, LJJ.)—The covenant in the separation deed was entered into on the basis of the facts which existed at its date, and the subsequent adultery of the husband created a

different state of facts which was not in the contemplation of the parties at the time they entered into the deed and therefore the wife was no longer bound by it. It is an incident of a suit for dissolution of marriage to make an order for maintenance and the Court will not permit parties to stop it from exercising its statutory powers as to grant of maintenance. The terms of the deed as to the sum agreed for maintenance may however be taken into consideration.

Charlesworth v. *Holt,* L. R. 9 Ex. 38 doubted.

Lawrence and Russell, JJ., dissenting.—The covenant was intended to be operative even after dissolution of marriage as it provides for its continuance after dissolution by death. The deed contains no provision that the parties should live apart in chastity, the only provision in the deed terminating the operation of the covenant being in the case of resumption of cohabitation. No provision restricting the operation of a covenant, absolute in terms, ought to be implied either on the ground that unless so restricted, the covenant might be against public policy, or on the ground that the covenant ought to be construed as being commensurate only with the period during which the husband is fulfilling the character of husband.

Any person who is competent to contract may agree to renounce the advantage of a statutory provision made solely for his or her individual benefit.

Charlesworth v. *Holt,* L.R. 9 Ex. 38 followed.

Gandy v. *Gandy,* 7 P.D. 168 approved.

Morrall v. *Morrall,* 6 P.D. 98 disapproved.

Lawrence, L.J.—No agreement between the spouses purporting to affect the rights or interests of children would bind the children or operate to prevent any application being made on their behalf to the Court to exercise its powers in their favour.

GREEN *v.* GREEN, (1929) P. 101: 98 L.J.P.D. 58.

Divorce—Child born before marriage of the divorced parents—Order for custody of the child in the petition for divorce by the wife—Child and other persons affected by legitimacy not represented in the petition—Competency of court to pass order for custody.

On a petition for dissolution of marriage presented by the wife on the ground of adultery of the husband, an order for the custody of a child born before the marriage was prayed for. It was contended for the husband that a declaration of legitimacy determines the status of parent and child and displaces

the rights of other members in the family with the resultant effects of a far-reaching character not only in respect of kinship but of hereditary and successional rights and as such cannot be decided in a proceeding in which they are not represented.

Held (overruling the contention):—The statutory fetter imposed upon the Court from passing an order for the custody of the child could not override the petitioner's paramount claim to the care and control of the child. The *prima facie* right of the natural mother to tend and foster her child stands on a different footing from that of the putative father, and should be protected in divorce proceedings to which the mother is a party. This relief, the High Court could grant in the exercise of the general jurisdiction in respect of infants apart from the Legitimacy Act.

THE YOUNG SID, (1929) P. 109.

Shipping—Collision—Appeal from County Court on proportions of blame—Appeal allowed—Costs if to be awarded to appellant.

In an action for damages by collision, the County Court had held both the ships were to blame but in different degrees. The Divisional Court allowed the appeal against it holding that both were equally to blame. The question arose if the appellant in the circumstances could have his costs.

Held, that in respect of the appeal, the costs of the appeal ordinarily would follow the event of the appeal and the comparative triviality of the amount involved is no consideration.

The Canton, (1928) 31Ll. L. Rep. 289 distinguished.

SHERWOOD *v.* SHERWOOD, (1929) P. 120.

Divorce—Rate of maintenance payable to wife—Disposable income of the husband—Meaning of—Proportion of husband's income, no inflexible rule.

In fixing the maintenance payable to the wife on dissolution of marriage, there is no rule fixing any proportion of the husband's disposable income, though in practice one-third is treated as a fair amount. In calculating the disposable income of the husband, the expenses of earning it must be deducted. Such expenses include his liabilities for income-tax, super-tax, and where chargeable excess profits duty, etc. Also in calculating the disposable income per year of the husband, the court must have regard not merely to the income during the year before the order for maintenance is made but also to the earnings in the previous years and the probable future income.

STATHAM, J. T. *v.* STATHAM, J. C., (1929) P. 131.

Divorce—Charge of sodomy with wife—Wife consenting party thereto—Wife an accomplice—Corroboration necessary—Sexual malpractices if by itself legal cruelty—Condonation, not pleaded—If court can take notice of.

The wife petitioned for divorce on the ground of (*i*) sodomy alleged to have been committed on her by the husband, and (*ii*) legal cruelty consisting of improper sexual practices and ill temper, abuse and the like. In proof of sodomy there was only the wife's evidence against the husband's denial. In summing up to the jury, the Judge did not warn them against acting on the uncorroborated evidence of the wife, who being a consenting party thereto was more in the position of an accomplice.

Held:—Cogent evidence is required to overcome the presumption of innocence where such a charge is made. The same principles apply in divorce proceedings as in a criminal court in deciding such heinous charges. The Judge ought to have warned the jury against finding on the uncorroborated testimony of the wife. Further the wife by subsequently living with the husband amicably condoned the offence and though it was not pleaded by the husband, the court ought to take notice of it.

JOTTINGS AND CUTTINGS.

My Lord.—A correspondent reminds me, on the subject of the proper way to address judges, that the matter has not always been free from doubt in our own country. In the early days of the present century there were complaints as to the slipshod way in which a practice had grown up of addressing chairmen and deputy-chairmen of metropolitan sessions and minor judicial dignitaries with as much pomp as Judges of the High Court, the Court of Appeal and the House of Lords; and it was suggested that the Attorney-General, the Lord Chamberlain, the Bar Council or some other infallible authority should make a pronouncement on the subject.

In former days the description "my lord" was confined strictly to the Lord Chancellor, the three "Chiefs" and the puisne judges of the King's Bench, Common Pleas and Exchequer. Even the Vice-Chancellors were at first nothing more than "your honour." Indeed, there were some authorities who maintained that, when sitting *in banco,* a High Court Judge was not "my lord." It is recorded that Serjeant Williams, "the renowned Serjeant," grandfather of Vaughan-Williams, L.J.,

when interrupted in the course of his argument by a puisne judge, would say: "Sir, I will answer your observations when I have replied to my lord."—*L.J.*, 1929, p. 185.

Buying a Mastership.—In these pure and high-minded days it is hard to believe that there ever was a time when legal offices were bestowed without regard to the fitness of those who received them. Yet it is recorded in the pages of history that once upon a time there was a Lord Chancellor who was in the habit of selling masterships in Chancery. This was, indeed, the gravest of the twenty-one articles of impeachment which the House of Commons formulated against Thomas Parker, Earl of Macclesfield, in the year 1724. The mastership in those days was a splendid appointment compared with which the modern mastership is a very shabby affair. It was, therefore worth buying.

Master Bennet, who gave evidence against Lord Macclesfield, appears to have got his mastership at bargain prices, for he paid no more than 1,500 guineas. Master Elde paid more; for he brought in a basket to the Lord Chancellor's house five thousand guineas in gold and notes, being the price of his mastership. Master Thurston's negotiations were conducted through the Lord Chancellor's lady. He left on the Countess of Macclesfield's table 5,250*l.* in bank notes, of which, at a later date, she sent back 3,250*l.* His Lordship was fined 30,000*l*; and King, C.J., who sentenced him, also succeeded him on the Woolsack.—*L.J.*, 1929, p. 185.

Lord Finlay and Lord Phillimore.—During the past week, death has removed two revered and beloved lawyers from our midst. Lord Finlay died on Saturday at the age of 86, and Lord Phillimore on Wednesday at 83; each was full of years and honour. It is a melancholy coincidence that the two Englishmen who have, perhaps, been more closely connected with the Permanent Court of International Justice than any others of their countrymen should have passed away in a single week; Lord Phillimore was the English representative on the Commission which sat at The Hague in 1920 to prepare the scheme for the establishment of the Court, and Lord Finlay was the first British member of it. In the case of Lord Phillimore, the attraction to international law was hereditary; for his father, Sir Robert Joseph Phillimore, was a well-known authority on the subject, as well as being famous as an ecclesiastical and Admiralty lawyer—he was the

last Judge of the Court of the Lord High Admiral, and one of the original Judges of the Probate, Divorce and Admiralty Division created by the Judicature Act of 1873. Lord Phillimore, like his father, specialised at the Bar in ecclesiastical and admiralty work; but not wishing to try divorce cases, he accepted a King's Bench judgeship and became a great common law judge. Elsewhere in this issue we refer to Lord Finlay and his career; and next week we shall deal more fully with the life and work of Lord Phillimore.—*L.J.*, 1929, p 193.

Lord Atkin's Counsel.—There has grown up a pleasant custom by which, at the Annual Reception given to the past and present students of the Law Society's School, some distinguished lawyer is invited to address the assembly, and to give to those present the benefit of his experience of life and of law. At Wednesday's function the speaker was Lord Atkin, and his address was compact of sage counsel. He made four main points. First, the student should remember that education goes on throughout life, and that that part of it which comes to a close with a "final" examination is really only an equipment for commencing real education. Secondly, the lawyer's chief duty is to prevent disputes from arising, and not to foment them; as he very truly said, every reputable lawyer recognises this principle and acts upon it, lay opinion to the contrary notwithstanding. In the third place, he reminded his hearers that not only the judiciary, but all members of the profession, are ministers of justice, and should have the ideal of assisting in its pure administration always before them; and, lastly, he said that the work that really counted was the work that was given —work that was done of the love of the task and for the achievement of an end, not work done merely for the material gain of the doer. A very inspiring address.—*L.J.*, 1929, p. 193.

The Lord Chancellor on Departmental Legislation.—As we anticipated, clause 123 of the Local Government Bill, which allows the Minister of Health, "if any difficulty arises in connection with the application of this Act to any exceptional area, or in bringing into operation any of the provisions of this Act," to make such order for removing the difficulty as he may judge to be necessary, and thereby to modify the provisions of the Act, has received further criticism in the House of Lords. In the House of Commons, in consequence of the opposition to the clause, certain changes were made, but as we pointed out, these did not really alter its effect. In the House of Lords,

the Lord Chancellor has found it necessary to make a further concession. Lord Askwith's amendment requiring the positive approval of Parliament to any Order made by the Minister he did not accept. The consequent delay, he considered, would interfere with administrative dealings, where prompt action was required. But Lord Hailsham offered as a compromise to propose on the Report stage an amendment which, while not preventing an Order from coming into operation, would annul it if express Parliamentary approval was not given within three months, allowance being made for periods when Parliament is not sitting. This is in lieu of the Order merely lying on the Table of both Houses. The proposed amendment should impose an effective check on departmental legislation, and will, it is presumed, be incorporated in other similar Bills.—*L.J.*, 1929, p. 194.

The Age of Marriage.—A Bill which at first sight would seem to involve but little controversy has occasioned two animated and, at times, acrimonious debates in the House of Lords during the past few weeks. During February Lord Buckmaster introduced a Bill of which the material provision is;

A marriage between persons either of whom is under the age of sixteen shall be void.

In moving the second reading, he referred to a case in which a girl of twelve or thirteen had been the subject of rape by a man of about thirty. The offender was charged with the offence and thereupon married the child, so that, to use Lord Buckmaster's phrase, she might be "unable" to give evidence against him. This particular instance, if not the *causa sine qua non* of Lord Buckmaster's interesting himself in the matter, seems, at any rate, to have been the *causa causans* of the introduction of the Bill at the moment. Amid universal expressions of approval of its principle, the Bill was read a second time. On February 23 it came before the House of Lords for the Committee stage, whereupon Lord Darling moved to leave out the word "void," and to insert:

"voidable by either party to the marriage on an application to be made to the Court in accordance with Rules of Court before both parties reach the age of sixteen"

Lord Darling explained that marriages by persons under the present legal age of consent—fourteen for boys and twelve for girls—are at present voidable, but not void, and that the result of his amendment would be to raise the age of consent to marriage to sixteen, but otherwise to leave the law as it stands.—*L.J.*, 1929, p. 194.

"Festina Lente."—Incidentally, he pointed out that in the case of rape cited by Lord Buckmaster, the child would not become incompetent as a witness by marrying the accused, but Lord Buckmaster retorted that as she would not be a compellable witness, it might practically be said that she would be unable to testify against him. After a spirited debate, the Committee stage of the Bill was adjourned, and was resumed on Tuesday, when, after a most eloquent appeal by Lord Buckmaster for progress to be made, Lord Darling moved and carried a motion for its reference to a Select Committee. A remarkable division of legal opinion was manifested in the debate, Lord Buckmaster, Lord Parmoor and Lord Reading maintaining strongly that the Bill should be dealt with at once by the House, and that marriages by persons under sixteen should be not voidable but void, regardless of what may be called collateral consequences, and Lord Darling, Archbishop Davidson, Lord Hanworth, Lord Halsbury, K.C., and Lord Desart urging that such an alteration in the law should only be made after the matter had been carefully considered in all its aspects by a Select Committee. In the result, the Bill was referred to a Select Committee by 37 to 29, the Lord Chancellor voting with the majority. Everyone must be in sympathy with the object of the Bill, and, as at present advised, we are inclined to think that it would be better to make marriages by persons under sixteen absolutely void, and not merely voidable. But the proposal obviously raises important issues—it would, for example, render illegitimate a certain number of children who would otherwise be born legitimate—and a full investigation of these issues ought to enable an agreed Bill to be prepared and passed with a minimum of delay.—*L.J.*, 1929, p. 194.

Dominion Status.—The Imperial Conference of 1926 laid down for the relations of Great Britain and the Dominions a formula which in some respects is on the same footing as the Constitution of the United States. Mr. J. H. Morgan, K. C. took it as the text for his Rhodes Lecture at University College on Friday, the 15th instant "Great Britain and the Dominions are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations." This declaration resembles the Constitution of the United States in that, once laid down with the consent of the representatives of the Dominions, there is no

going back upon it. What may be the practical consequences of the formula—that is another matter. Written constitutions, like those of the United States, have to be worked out by practice and by judicial decision. The declaration as to Dominion Status is not of a nature to be submitted to any Court for decision. It can only be worked out by practice, and Mr. Morgan's lecture usefully points out the matters in which practice may elucidate it; in particular, to what extent sovereignty can be attributed to the Dominions. It is, he says, much more than the sovereignty of an American State; much less than the sovereignty of an International State—that is, we presume, a State recognised between nations as independent. Three points there are, however, which define the position: the common allegiance to the Crown; the internal autonomy of the Dominions; and the subjection to the control of the central Government in extra-territorial matters; and, though Mr. Morgan did not on this occasion mention it, there is the jurisdiction of the Judicial Committee, still a real jurisdiction, though in some of the Dominions its scope is diminishing. The first sign of the semi-sovereignty of the Dominions was when they appended their separate signatures to the Covenant of the League of Nations.—*L.J.*, 1929, p. 213.

The Expensiveness of "Silks".—The recent remarks of Lords Justices Scrutton and Sankey as to counsels' fees have very naturally occasioned a considerable amount of public comment, and our own observations on the matter have been freely quoted in the lay press. We expressed the view (*ante* p. 174) that the fact "that litigation is being 'killed' by the large fees paid to counsel is not the fault of the Bar, and still less the fault of the solicitors; it is the litigant himself who is responsible." "This," says the *Liverpool Echo* (March 11) "will not stand examination"; "This", says *Truth* (March 13) "is perfectly true." We hope we may be forgiven if, on such a matter as this, we regard *Truth* as being the better informed of the two. The *Liverpool Echo* proceeds to examine our proposition:—

> It is true that a few wealthy litigants may on occasions demand the services of fashionable counsel at fancy fees, and those persons are wealthy enough not to bother about what they pay. But the ordinary litigant is not responsible for high fees. The legal profession—both branches—benefits from these high fees; the litigant certainly does not Others have vested interests in high fees; he is in danger of being ruined by them.

This statement is, with all respect, inaccurate as to its facts and fallacious as to its reasoning. If the demand for the services of "fashionable counsel at fancy fees" were restricted to

"a few wealthy litigants," there would neither be "fashionable counsel" nor "fancy fees". It is the constant and imperative demand for his services that makes counsel "fashionable"; and the "fancy fees" are the measure of this demand, and are, indeed, often fixed in an endeavour on the part of the counsel concerned to limit the amount of his work. *Truth* puts the matter very neatly:—

> The public has a weakness for legal, as well as theatrical "names," and, by the law of supply and demand, the prices go up. A few famous barristers make huge incomes, while the greater part of the profession make very small ones.

—*L.J.*, 1929, p. 214.

A Blessing or a Curse.—And why is it suggested that "the legal profession—both branches—benefits from these high fees?" The only persons who in fact benefit are the "fashionable" leaders and their clerks, and the juniors who happen—for most of them very occasionally—to be briefed with them. The solicitor gets no benefit whatever; but he shares with the vast majority of the members of the Bar in the disadvantages caused by the undoubted fact that lay clients demand the services of fashionable leaders, and that if they find their fees too high to enable them to employ them, they frequently prefer to settle rather than to brief a lesser-known but possibly equally efficient "silk". It is by no means in the public interest that litigation should decline on account of the expense involved, wherever the responsibility for the present position lies; but the remedy is in the hands of litigants themselves. The "two-thirds" rule, under which the junior is entitled to a fee two-thirds that of the leader, is often blamed; but it is a perfectly reasonable rule where an ordinary leader is briefed at an ordinary fee. The problem will only be solved if and when litigants realise that their interests can be as well protected by counsel who are not forced by the demand for their services to charge prohibitive fees as by those whose names are familiar to them by reason of their constantly appearing in the comparatively rare cases in which expense is no object.—*L.J.*, 1929, p. 214.

Piety, Punishment, and Other Matters.—Indeed it was said, not without cause, that his horror of sexual offences and marital infidelity was so intense that he did not fail, when opportunity offered, to express his abhorrence in terms of penal servitude. It was a natural, if not a judicial, expression of the views and personality of a man of deep religious convictions; and in time, while not abating one jot the strictness of his views, he learnt to

moderate the severity of his punishments. In 1921, when the Criminal Law Amendment Bill was in the House of Lords, he stoutly opposed the proposal to abolish the defence of reasonable cause for believing that a girl was sixteen years of age. On the other hand, he opposed, even more stoutly than the Bishops, the passage of Lord Buckmaster's Divorce Bill.

Of the sayings quoted in the recent biographical notices perhaps the most notable is that of the Master of Westminster School, that the "Phillimores are all clever, but none of them has any common sense"; while a *Punch* epigram which appeared some time ago perpetrated a pardonable pun when it observed:—

"We had not liked his law so much
Loved we not Phillimore."

—*L.J.*, 1929, p. 224.

Legitimacy Act, 1926.—In the case of *Jones* v. *Jones* (*post*, p. 179), Mr. Justice Hill delivered a considered judgment on Monday last. His Lordship held that the court had no power on the application of one of the parties to a divorce suit to make an order for the custody of a child born before their marriage and legitimated by the Legitimacy Act, 1926, although such child had subsequently been re-registered in accordance with the provisions in the schedule to the Act. The evidence in the case was similar to that in *Green* v. *Green* (1928, 140 L.T. Rep., p. 93), except that in that case there had been no re-registration, and it was held that the addition of the evidence of re-registration did not take the case out of the authority of the earlier case. Where a child was born before marriage the difficulty in the way of an order for custody arose, in his Lordship's view, not from lack of evidence, but from lack of the necessary parties, and, therefore, of jurisdiction. An order was made giving the applicant the care and control of the child in exercise of the general jurisdiction of the High Court with regard to infants, but the order for custody was refused. The cases have made it clear that the automatic legitimation conferred by the Act is not conclusive for all purposes, and, therefore, where questions of status or proprietary rights are likely to arise it is advisable to apply for a declaration of legitimacy under S. 2 of the Act, when all parties concerned can be represented, and an effective judicial decree made.—*L.T.*, 1929, p. 172.

The Rule of the Road.—A writer in *The Times* on Wednesday recommends the rule, "keep to the right," as the safest rule

for pedestrians in pathless country lanes after dark, but says that in daylight he has always found it best to "keep to the rule of the road" by walking on the left or near side. He asks whether, if he adopts the advice often given him to walk on the right side in daylight as well as after dark, the driver of a vehicle meeting him should pull out and let him continue on the right side or whether he himself should step towards the middle of the road and risk being overtaken by a second vehicle. The "rule of the road" to which the correspondent refers is, as a legal rule, of very restricted application, the courts having held that there is no rule of law that a driver should keep to the left or near side in all circumstances. On a clear road with nothing in sight a driver can take any part of the road he chooses, subject to his obligation to keep a sharper look-out and when he sees a vehicle to go to his proper side in good time. Under S. 78 of the Highway Act, 1835, the driver of any wagon, cart, or other carriage whatsoever, or of any horses, mules, or other beasts of draught or burden meeting any other wagon, &c., must keep "on the left or near side of the road"—*i.e.,* to the left side of the centre of the road, not necessarily close to the edge or kerb on the near side. S. 28 of the Town Police Clauses Act, 1847 also provides that in districts in which that Act is in force a driver meeting any other carriage shall keep his wagon, &c., to the left or near side, and passing any other carriage shall keep on the right or off side, except in cases of actual necessity or some sufficient reason for deviation, but there is no general legal rule even for vehicles and no legal rule whatever for the anxious pedestrian.—*L.T.,* 1929, p. 172.

Child Marriages.—In recent comments on Lord Buckmaster's Bill we indicated that Lord Darling had in mind some far-reaching amendments. These have now been developed and they certainly open up some grave considerations. Lord Buckmaster's main proposal is that a marriage between persons either of whom is under sixteen shall be void. Lord Darling has an amendment which would leave out "void" and insert "voidable", and he would leave it to either party to the marriage to make an application to the court in accordance with rules before both parties reach the age of sixteen. This proposal is not due to any desire to wreck the Bill, but is founded on the grave results which would ensue by bastardising children of these marriages. This is surely an effect of the Bill such as calls for no little reconsideration. It is apparently the fact that this grave result would be a very common feature in these cases; for pregnancy is to be

found in sixty-four per cent. of marriages of girls under sixteen. Obviously the desire for marriage is largely based on the wish to regularise the birth of a child. Another effect of the Bill was mentioned by Lord Darling. He assumes that one of these marriages has been contracted and the parties have lived together for a long period of years. The wife, believing herself to be a wife, pledges the man's credit. She is pressed for payment and the man repudiates liability for the most elementary needs of life. He could simply say that there had not been a marriage, and rely on the provisions advocated so earnestly by Lord Buckmaster. The arguments used by Lord Darling have apparently been reinforced by the views of certain Church authorities and social workers, who would clearly not seek to oppose the general principle of the Bill, but who realise that it may be necessary to subject it to some drastic amendment in drafting. Lord Darling has clearly acted with wisdom in securing a little time for reconsideration, and as the Bill is down for re-examination on the 12th March, there is no reason why this short delay should not be of ultimate benefit to the scheme. If there is one subject on which legislation should not be rushed it is that upon which the whole home-life of a Christian country is based.—*L.T.*, 1929, p. 204.

The Police Commission Report.—The report of the Royal Commission under the chairmanship of Lord Lee of Fareham appointed in August last to report on the conduct of the police in the investigation of crimes and offences was published a few days ago. The report, which is a lengthy one and raises points which call for careful consideration, will be dealt with more fully in a subsequent issue: meanwhile an indication of its general tenor may be useful. In the first place it is not a general white-washing of the police and their methods, but it is a rebuttal of the sensational charges against their general good faith which gained some credence a year or so ago. Much of the criticism levelled of late against the force has its root cause, it is suggested, in its being called upon to enforce laws which are out of harmony with public opinion, an antagonism thus being aroused which hampers them in the general carrying out of their duties. Whatever precisely "Third Degree" methods may mean when applied to the English force by their accusers, the committee have no belief in their existence, nor in the trumping up of "faked" charges. On the other hand they incline to agree with witnesses of authority that there is an occasional tendency on the part of the Police, when they consider a prisoner to be guilty, to strain the evidence against him so as to secure his conviction: they agree, in short,

that "police evidence is usually excellent, but must be carefully watched." Further, a somewhat trenchant criticism is passed on Scotland Yard in that it has a tendency to regard itself as "a thing apart" to which ordinary police restraints should not be held to apply. As regards the much-discussed question of statements from persons not in custody, the committee point out that the combined effect of rules (1) and (2) of the Judges' Rules is that a policeman can question a suspected person without administering a caution right up to the moment at which he makes up his mind to arrest or charge, the moment at which it is administered being capable of being varied for "tactical" purposes. This they hold to be contrary to the spirit of the caution, and they recommend that at the outset of any formal questioning, whether of a suspected person or a potential witness, a constable should deliver a simple caution in non-technical language which could be readily understood by anyone. The witness "whose personal character is involved" would, in the view of the committee, require no special warning, and they advise withdrawal of the provisional order to the Metropolitan Police. Another recommendation of which there will probably be approval on the part of the Profession, is that statements of accused persons tendered in evidence should, so far as practicable, be communicated to the court in the language of the accused, both answers, and, be it noted, questions, being taken down as nearly as possible in the actual words. In so recommending the committee say that they have in mind the danger "that a statement may imperceptibly change its meaning in the process of passing through the mind of another person, who expresses in different, though possibly better, language, what he considers to be the true meaning of the deponent, but who has a preconception of the facts in his own mind to which he is perhaps unconsciously aiming to take the narrative conform." The difficult matter of offences against the liquor laws and the use of surreptitious methods by the police elicits a recommendation for the introduction of legislation giving the police a right of entry to all registered clubs. Of the Director of Public Prosecutions and his department the report has little to say: it does, however, express the opinion that recourse should be had somewhat more freely to the practice by which in certain exceptional cases statements are taken by this department instead of by the police. The next step is with the Government.—*L.T.*, 1929, p. 257.

Copyright in Photographs.—The case of *Shasa Limited* v. *Stoenesco,* in which Mr. Justice MacKinnon last week granted

an injunction, calls attention to the law of copyright in photographs and to the need for definite agreements where the photographs of "celebrities" are concerned. The plaintiffs, who specialised in photographing celebrities, claimed damages for infringement of copyright in the photographs of six well-known actresses. The defendant pleaded that each photograph was "ordered" by the subject of the picture, or by some other person, and was made for "valuable consideration." The principal question in the case, therefore, turned on the proviso (*a*) to sub-sec. (1) of section 5 of the Copyright Act, 1911. The sub-section and proviso read as follows:

> (1) Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein · Provided that (*a*) where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright.

Some of the sitters who gave evidence stated that they had purchased copies of the photographs—twelve guineas a dozen having been paid in one case—and one sitter claimed that she had stipulated that the copyright in her photograph should be her property. The manager of two of the sitters, who claimed that the copyright of his clients' photographs belonged to them, stated that in such cases it was usual to arrange for "part copyright," the photographer being allowed a few weeks to get his publicity and profit from the illustrated papers. His Lordship said that the real question was whether the requests made by the various persons concerned implied any legal liability to pay for the work done in making the negative if no copies were ordered. After going carefully into the evidence His Lordship held that all the copyrights were in the plaintiffs and not in the respective sitters, and he gave judgment accordingly. Having regard to the difficulty in such cases of deciding whether a request to be allowed to take a photograph has been followed by an "order" to do so, and in the view of the possible importance in certain cases of being able to control the publication of portraits which may be deemed caricatures or even "libellous," simple and definite forms of agreement seem advisable in such cases.—*L.T.*, 1929, p. 258.

Our Modern Peerage.—The publication of the delayed "New Year" Honours List serves to recall how modern, comparatively speaking, are either the various grades of distinctions, or the majority of the creations now enjoyed by those whose order has

an ancient origin. With the exception of secondary titles, *e.g.*, the Duchies of Lancaster and Cornwall, held by His Majesty or the Prince of Wales, all the royal dukedoms have been conferred within the past sixty years. Conversely, however, the dukedom of Westminster was the last to be bestowed on a subject. This was in 1874, the same year which saw the creation of the royal dukedom of Connaught. Even so, Norfolk is the only duchy which dates back to pre-Tudor times, 1483.

"Jockey of Norfolk, be not too bold,
For Dickon thy master is bought and sold."

Again, Somerset, first held by Edward VI.'s ill-fated "Lord Protector," is the sole remaining Tudor patent, chiefly because Elizabeth made no dukes at all during her long reign, and desired to see this dignity fall into disuse. The title of Marquis, which John de Beaufort, in Henry VI.'s day, refused "as a new honour altogether unknown to my ancestors," was in fact imported from Germany in the fourteenth century. But with the exceptions of Huntly and Winchester, Tudor, Queensberry, Lothian and Tweeddale, Stuart, attainders and defaults of heirs male have so depleted the order that all the other forty odd holders are the result of creations less than two centuries old. What is true of the two senior grades of the peerage applies equally to earldoms, viscounties and baronies. Baronetcies, of course, did not originate till James I.'s reign, while, with the notable exceptions of the Garter—the revival of the Bath was engineered by Walpole to serve his own purposes—and "the accolade of knighthood,'' all the other orders of chivalry certainly cannot be called ancient in the English sense of the word. All the same, those who cavil at the multiplication of honours and dignities hardly sufficiently remember that population has also very nearly trebled within the past hundred years, and the service of Empire now implies vastly more than it did when a turn at "shaking the pagoda tree" was the principal reward desired or obtained.—*S.L.J.*, 1929, p. 131.

A "Jactitation" Slander?—According to a newspaper, a popular American actress, now appearing in England, has been troubled by the claim of a man unknown to her that she is his "little wife", and has issued a writ for slander. The lady's advisers are said to have considered recourse to the ancient remedy of "jactitation," but to have rejected it because her nationality would have complicated matters. It does not appear, however, that domicil is required to give jurisdiction in jactitation as it is in divorce. Does then a man slander a woman

by falsely asserting that she is his wife? If she is somebody else's wife, and living with her husband, then no doubt he does so, for there is an obvious implication of unchastity. If she is a spinster, however, the defamation is not so clear. The man in effect asserts that he has chosen her for his highest compliment, which hardly seems defamatory. Possibly such a statement might drive off an eligible suitor, and thus cause a temporal loss, but there still remains the difficulty as to defamation. In *Duplany* v. *Davis*, 1886, 3 T.L.R. 184, the plaintiff, an actor, recovered £100 from the defendant, a contributor to a paper called *The Bat*, for falsely stating that the plaintiff had been a waiter. There was also the further suggestion that he was not a good actor, but it is somewhat difficult to follow the decision that such a statement was an actionable libel, for a waiter might reveal himself as an excellent actor, and it is well known that star comedians often rise from very humble origin. In *Shapiro* v. *La Morta*, 1923, 68 L.J. 522, a professional accompanist brought an action to recover damages for the loss of an engagement on a date when the defendants falsely asserted that she had agreed to accompany one of them in their concert, but the action failed on the issue of malice. Possibly an actress might be more popular, and a better "draw" as a spinster than as a wife, but that proposition has never been established; and seems very doubtful, in view of some of the most popular actresses being wives, not to say even divorcees. Whether a lady who lost a suitor could sue on such a false statement appears open to doubt. The suitor would have to give evidence, and, if still a bachelor, would have to explain why he did not marry the plaintiff when he found out the mistake. If he had married some one else before then, his position in giving such evidence *vis-a-vis* his lawful wife would be a delicate one. —*S.L.J.*, 1929, p. 132.

Leaders as Super-Luxuries.—An old controversy is revived by Lord Justice Scrutton's recent description of a leader as a "super-luxury and the unusual order of the Court of Appeal in regard to his fees. The suggestion that a litigant should not be allowed to avail himself of the best professional assistance obtainable is not one, we think, which will commend itself to many people. It is unquestionably desirable in the interests of the public and of the profession alike that the cost of litigation should be kept within reasonable limits, but it would be disastrous for all concerned if serious challenge were made to the citizen's right to retain the most skilful lawyers, a right as

indisputable as that of employing the most expert surgeon or architect. There remains the question of fees. The majority of litigants, being business men, are not prepared to pay more for a commodity than its worth. The barrister—both silk and stuff—dependent as he is entirely on his own skill, can command no higher price in the professional market than his services are worth, and to that price he is entitled. In this country, the professional standard is high; this is mainly due to the attraction offered to brilliant men by the possibility of ultimate rich reward. Refuse the prizes and brilliant men will no longer compete; the standard of professional skill will be lowered and the public will be the victims.—*S.L.J.*, 1929, p. 147.

BOOK REVIEWS.

THE ADVOCACY SERIES: VOL. VI. TRIAL TACTICS, by P. Ramanatha Aiyar and N. S. Ranganatha Aiyar. Price Rs. 3.

Book-maxims, we doubt, have much to do with the success of a lawyer, especially of one who belongs to trial Courts, where methods of conducting trials have often conformed to individual genius and personal experience. But a book of this nature, compiling some of the best lessons from stalwarts of the past, needs deservingly to be welcomed for the variety and taste of the innumerable illustrations. A Russell, with his enormous confidence which easily led him to a foremost position, or an Erskine famed for his eloquence which often captivated the Judge and the Jury, or a Webster an all-round accomplished legal luminary whose grasp of the fundamentals was infallible, cannot but strike the imagination of the reader as powerful exponents of the different methods of assuring success to the earnest practitioner. We are fortunate in having in this volume some portions of the trial of Tilak libel case, though we feel we could be still more genuinely pleased if only some specimens of the advocacy of our own eminent leaders had been brought out. It may not be unjustifiable, if the reader feels prone to judge every addition to this Series to have chosen almost the same topics with perhaps fresh illustrations from the inexhaustible storehouse of the legal annals and traditions of the Bar of Western countries.

Anyhow our thanks are due to the endeavours of the authors in presenting the Legal World with such a fund of information for the shaping of careers.—*K.C.*

HINDU LAW AS ADMINISTERED IN BRITISH INDIA, by Sir Ernest Trevelyan, 3rd edition, revised by the Author and

T. Chatterji, B.A., of Lincoln's Inn, Barrister-at-Law. Published by Messrs. Thacker, Spink & Co., Calcutta. Price Rs. 25.

It is nearly twelve years since the appearance of the last edition of Trevelyan's Hindu Law and we are indebted to Mr. Chatterji for bringing out the third edition of this useful text-book on Hindu Law. Owing to the death of Sir Ernest Trevelyan who, we understand, thoroughly revised the present edition and brought it up to 1923, the present editor has undertaken the task of noting the changes, since then, under the statutes and noticing the cases reported up to the 31st of December, 1927. While the distinctive feature of Sir Ernest Trevelyan's work, *viz.*, the lucidity of the statements of law is noticeable throughout the present edition, one cannot help feeling that the present editor might have taken greater liberties with the text of the work. To make our meaning clear, in dealing with the question of the validity of ante-adoption agreements, if one may use such a compendious expression, on the adopted son, the leading decision of the Privy Council in *Krishnamurthi* v. *Krishnamurthi*, (1927) 54 I.A. 248 has considerably shaken the previous notions on the validity of such arrangements. Though this decision of the Privy Council is noticed by the editor in the footnote on page 200, we are not sure that the statement of the law in the body of the work is fully in accord with their Lordships' decision in the case. We also notice in some places some important recent decisions not being noticed. Dealing with the legal consequence of a portion only of the consideration for an alienation by a limited owner or manager of a Hindu family being for necessity, we find the law stated on p. 554 as it was understood prior to the decision of the Privy Council in *Krishn Das* v. *Nathu Ram*, (1926) 54 I.A. 79 which disapproves of many of the decisions relied upon on that page. The decision of the Privy Council was given in December 1926 and was reported early in 1927. These features to some extent detract from the quality of the work and would, we hope, be remedied in any later edition of the work. We are however glad at the re-appearance of a well-known treatise and we congratulate the editor on the same.

THE LAW RELATING TO RECEIVERS, by Sir John Woodroffe, 4th edition, 1929. Published by Messrs. Thacker, Spink & Co., Calcutta. Price Rs. 12.

Even since its publication, Woodroffe's Law of Receivers has been the leading Indian text-book on the subject and we are glad to find that the author even after retiring from the Bench

has thought fit to bring out a new edition of the book. The book is not encumbered with case-law and the various points dealt with more in the light of principle than by reference of latest decisions. This mode of treatment while it has its obvious advantages, sometimes embarrasses the busy practitioner who is after precedents. We have no doubt that this edition will maintain the popularity of the preceding ones and the legal profession will find in it an up to date text-book on the subject.

THE LAW OF PLEADINGS IN BRITISH INDIA, by P. C. Mogha, 3rd edition, 1929. Published by Messrs. Eastern Law House, Calcutta. Price Rs. 10.

We had occasion to review the prior editions of this useful publication in our pages. It is unnecessary to stress the fact, that a thorough grasp of the principles and practice of pleadings is necessary for a practising lawyer and he cannot for that purpose turn his attention to any other Indian treatise than the one under review. The book proceeds on the well-known lines of Bullen and Leake on Pleadings and the popularity and usefulness of the work are clearly brought out by the circumstance that the third edition has been called for in less than three years after the second. We have no doubt that this work will be freely consulted by all lawyers in British India. We only wish to note that the author has in the present edition newly added precedents of applications under the Indian Succession Act and the Indian Arbitration Act and also of some commercial suits.

We are glad to acknowledge the receipt of the Madras Acts (Criminal, 1802-1927), Part IV, by P. Hari Rau, B.A., B.L., published by T. A. Venkaswami Rao, B.A., Mount Road, Madras

---

LAW OF IDENTIFICATION, by M. K. A. Khan, K.S, M.A., LL.M.

This is the fifth of the series of the useful publications of the Civil and Criminal Law Series brought out by Mr. Khan. The subject is one of importance in the Civil as well as the Criminal Courts and the author has collected together matters scattered over several books. We have no doubt that this book will be found as useful as the others of the series.

[END OF VOL. LVI.]